

Appendix C

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION
4 - - -
5

6 IN RE: NATIONAL : HON. DAN A.
7 PRESCRIPTION OPIATE : POLSTER
8 LITIGATION :
9 :
10 APPLIES TO ALL CASES : NO.
11 : 1:17-MD-2804
12 :
13

14 - HIGHLY CONFIDENTIAL -
15

16 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW
17

18 VOLUME I
19 - - -
20

21 April 17, 2019
22 - - -
23

24 Videotaped deposition of
25 THOMAS PREVOZNIK, taken pursuant to
26 notice, was held at the law offices of
27 Williams & Connolly, 725 12th Street,
28 Washington, D.C., beginning at 9:11 a.m.,
29 on the above date, before Michelle L.
30 Gray, a Registered Professional Reporter,
31 Certified Shorthand Reporter, Certified
32 Realtime Reporter, and Notary Public.
33 - - -
34

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37 deps@golkow.com
38

1 Q. In that time period, you
2 were still in the field offices or
3 training, so you would not have attended
4 any of the distributor briefings
5 personally --

6 A. Correct.

7 Q. -- Mr. Prevoznik?

8 A. Correct.

9 Q. Why don't we finish out your
10 experience, and then we'll take a short
11 break. Is that okay?

12 A. Sure.

13 Q. With respect to conferences,
14 just to close the loop on those, and we
15 may have further questioning on this,
16 were there -- you mentioned there was a
17 Pharma conference in 2011?

18 A. I didn't --

19 Q. Or for the pharmaceutical
20 industry? I could have that wrong. Was
21 there a separate conference for
22 pharmaceutical manufacturers?

23 A. There was -- the distributor
24 conference came later, but there was an

1 and the registrant community, get
2 together to talk about putting together a
3 suspicious order system for chemicals.
4 So that's what this was. This was a
5 requirement by the Act for us to sit down
6 and come up with a monitoring system.

7 Q. And so DEA officials
8 participated in the task force, correct?

9 A. Correct.

10 Q. If you take a look at the
11 bottom there, where there are some
12 numbers, and look at 2283.

13 A. I'm sorry. I'm losing you.
14 Okay, I got you.

15 Q. So at 2283 forward, there is
16 the membership of the suspicious orders
17 task force, correct?

18 A. Correct.

19 Q. And the chairman is from the
20 DEA office of diversion control; is that
21 right?

22 A. Correct.

23 Q. And then it looks like there
24 are also various DEA employees from

1 system in use by wholesale drug
2 distributors for controlled substances,
3 do you see that reference that you just
4 read?

5 A. Yes.

6 Q. Is it fair to say then,
7 there was in fact at this point in time,
8 in 1998, a DEA-approved suspicious order
9 monitoring system for controlled
10 substances?

11 A. I would say no, because
12 there was never a -- DEA never had an
13 approved system. The system that the
14 statute requires and the regulations
15 require is the registrant is to design
16 and operate that system.

17 They come to us and they
18 say, here's our system, and we may have
19 discussions with them about it. So you
20 can have a great system in paper, but
21 when you implement it, are you actually
22 implementing what you say.

23 So that's part of our job,
24 when we go out there for schedule

1 investigation, is to look at that program
2 and are they doing what they're saying,
3 is it actually detecting suspicious
4 orders.

5 Q. So, Mr. Prevoznik, try to
6 listen to my question and answer it. I
7 realize that you would like to speechify
8 a little bit and get out your talking
9 points, but please restrain --

10 MR. FINKELSTEIN: Try not to
11 argue with the witness.

12 BY MS. MAINIGI:

13 Q. -- from doing that.

14 MR. FINKELSTEIN: You can
15 ask your questions. And you're
16 not here to abuse him.

17 BY MS. MAINIGI:

18 Q. So, Mr. Prevoznik, let's
19 back up. The DEA helped to write this
20 report, right?

21 A. Correct.

22 Q. And someone from the office
23 of diversion control at the DEA was in
24 fact the chair of the group that wrote

1 BY MS. MAINIGI:

2 Q. So, the -- I'm sorry.

3 A. Go ahead.

4 Q. I didn't mean to interrupt
5 you. Are you --

6 A. Yeah.

7 Q. Okay. So in '05, '06 and
8 '07, as I understand it from Mr. Wright's
9 testimony, he and Mr. Mapes primarily
10 handled the distributor initiative
11 briefings, correct?

12 A. Correct.

13 Q. And you have talked to
14 neither Mr. Wright nor Mr. Mapes,
15 correct?

16 A. Correct.

17 Q. So you don't know sitting
18 here today what Mr. Mapes or Mr. Wright
19 said or heard in those distributor
20 initiative briefings, correct?

21 MR. FINKELSTEIN: Objection.
22 Argumentive.

23 THE WITNESS: No.

24 BY MS. MAINIGI:

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14 - HIGHLY CONFIDENTIAL -

15 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

16 VOLUME II
17 - - -
18

19 April 18, 2019
20 - - -
21

22 Continued videotaped
23 deposition of THOMAS PREVOZNIK, taken
24 pursuant to notice, was held at the law
 offices of Williams & Connolly, 725 12th
 Street, Washington, D.C., beginning at
 8:16 a.m., on the above date, before
 Michelle L. Gray, a Registered
 Professional Reporter, Certified
 Shorthand Reporter, Certified Realtime
 Reporter, and Notary Public.

 - - -
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1 terminate controlled substance sales to
2 the customer and report the termination
3 to the DEA."

4 Do you understand what I
5 just read to you?

6 MS. MAINIGI: Objection.

7 Form. Objection. Scope.

8 THE WITNESS: Can I get the
9 first -- the first part of the
10 question?

11 BY MR. FARRELL:

12 Q. Yes. So specifically what
13 I'm referencing is Cardinal Health's
14 reply brief, in Cardinal Health versus
15 Eric Holder, which was a preliminary
16 injunction filed by Cardinal Health in a
17 DC District Court. And in it -- in the
18 reply brief there's a provision in here
19 that I read to you. And in essence what
20 it says is that if you get a suspicious
21 order, and you block it, that Cardinal
22 Health would terminate that customer and
23 not sell to it anymore.

24 Do you agree that if a

1 wholesale distributor gets a flag of a
2 suspicious order, that they've determined
3 to be a suspicious order, and that they
4 block that shipment, that they should
5 terminate all future sales to that same
6 customer until they can rule out that
7 diversion is occurring?

8 MS. MAINIGI: Objection.

9 Form. Objection. Scope. Calls
10 for a hypothetical.

11 MR. EPPICH: Objection to
12 the foundation. Calls for
13 speculation.

14 THE WITNESS: Yes, I would
15 agree.

16 BY MR. FARRELL:

17 Q. The same thing applies to a
18 document involving McKesson.

19 On August 13, 2014, the
20 United States Department of Justice was
21 communicating with the lawyer for
22 McKesson which ended up resulting in a
23 \$150 million fine.

24 And in this discussion, the

1 attached to this in the Cardinal Health
2 files, is a cover sheet that says letters
3 from DEA approving the format.

4 And if you look, the first
5 letter is dated April 27, 1984.

6 Are you familiar with this
7 correspondence?

8 MS. MAINIGI: Objection.
9 Outside the scope. It's 1984.
10 Form and foundation.

11 MR. FARRELL: Well, the
12 irony of it is, is that Cardinal
13 Health specifically referenced
14 this document in its combined
15 discovery responses.

16 So I'm going to ask you --

17 MS. MAINIGI: Outside the
18 scope of this deposition.

19 MR. FARRELL: I'm going to
20 ask the witness again --

21 BY MR. FARRELL:

22 Q. Are you familiar with this
23 document?

24 A. No.

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7 _____) Case No.
8) 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES) Hon. Dan A.
11 TO ALL CASES) Polster
12)

13 FRIDAY, MAY 17, 2019

14 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
15 CONFIDENTIALITY REVIEW

16 - - -

17 Videotaped deposition of Thomas
18 Prevoznik, Volume III, held at the offices of
19 WILLIAMS & CONNOLLY LLP, 725 Twelfth Street,
20 NW, Washington, DC, commencing at 8:10 a.m.,
21 on the above date, before Carrie A. Campbell,
22 Registered Diplomate Reporter and Certified
23 Realtime Reporter.

24 - - -

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1 It's called Summary of DEA HDMA
2 meeting, December 19, 2011.

3 Do you recall a meeting between
4 the DEA and HDMA in 2011?

5 MR. EPPICH: Objection.
6 Foundation.

7 THE WITNESS: I don't.

8 QUESTIONS BY MS. SINGER:

9 Q. The DEA did meet with the HDMA
10 periodically, correct?

11 MR. EPPICH: Objection.
12 Foundation.

13 THE WITNESS: Correct.

14 QUESTIONS BY MS. SINGER:

15 Q. Okay. And down at the bottom
16 of the page here, in the last paragraph, it
17 says, "HDMA asked if there was any -- if
18 there were any noncompliance trends
19 throughout the wholesale distribution
20 industry we should inform our members about."

21 Do you see where I am?

22 A. Yes.

23 Q. Okay. "Gary Boggs" --

24 Who we talked about just a
25 minute ago, correct?

1 can say DEA policy is that they should not.

2 Q. Okay. I appreciate that.

3 And I believe you testified
4 that the DEA has consistently advised
5 registrants that they should not ship an
6 order that they report as suspicious; is that
7 correct?

8 A. Correct.

9 Q. And when you say
10 "consistently," you were referring to the
11 time period from 1971 when the Controlled
12 Substances Act was passed until present day;
13 is that right?

14 A. Yes.

15 Q. So approximately a 50-year
16 period. Your testimony is that the DEA
17 guidance on that point has been consistent,
18 correct?

19 A. Correct.

20 Q. All right. You joined the DEA
21 in 1991, correct?

22 A. Yes.

23 Q. In my home city of
24 Philadelphia?

25 A. Yes.

1 A. No.

2 Q. And you did not speak with Kyle
3 Wright, correct?

4 A. No.

5 Q. There was a reference to a Tom
6 Gitchel earlier today; is that right?

7 A. Tom Gitchel, yes.

8 Q. And who is Tom Gitchel?

9 A. Tom Gitchel was a senior
10 manager within the diversion program at DEA.

11 Q. Okay. And did you speak with
12 Tom Gitchel in preparation for providing
13 testimony on behalf of the DEA?

14 A. No.

15 Q. Okay. How about Patricia Good?
16 Did you speak with Patricia Good?

17 A. No.

18 Q. How many field offices does the
19 DEA have?

20 A. Currently we have 23.

21 Q. Okay. And do you know how many
22 field offices the DEA had in the 1990s?

23 MR. FINKELSTEIN: Objection.

24 Scope.

25 THE WITNESS: I believe it was

1 with -- DEA's consistency has been
2 that, where I think the
3 inconsistency -- this is me
4 speaking -- is that those two words
5 have been interchanged. Because it's
6 still referring to after-the-fact
7 shipments, and suspicious orders are
8 before shipment.

9 QUESTIONS BY MR. MAHADY:

10 Q. Okay. Mr. Prevoznik, the DEA
11 approved for implementation nationwide a
12 suspicious order monitoring system that
13 reported suspicious orders to the DEA on a
14 daily basis after the report -- after the
15 orders had already been shipped, correct?

16 A. Yes.

17 Q. Mr. Prevoznik, are you aware
18 that Bergen Brunswig merged with Amerisource
19 in or around 2001 to become AmerisourceBergen
20 Corporation?

21 MR. FINKELSTEIN: Objection.

22 Scope.

23 THE WITNESS: I know they
24 merged. I don't know what year.

25

1 answered. Incomplete hypothetical.

2 And I'd appreciate the break.

3 THE WITNESS: Could you please
4 repeat it?

5 QUESTIONS BY MS. MAINIGI:

6 Q. Are they required to hold the
7 other orders that they don't view to be
8 suspicious, or is it okay for the distributor
9 in that instance to exercise their business
10 judgment and send those nonsuspicious orders
11 out?

12 MR. FINKELSTEIN: Asked and
13 answered. Incomplete hypothetical.

14 THE WITNESS: Yes.

15 QUESTIONS BY MS. MAINIGI:

16 Q. Yes what?

17 A. They can.

18 Q. Okay. They can ship those
19 other orders out?

20 A. Yes.

21 MS. MAINIGI: Okay. Let's go
22 ahead and take your break.

23 VIDEOGRAPHER: We're going off
24 record. The time is 4:53.

25 (Off the record at 4:53 p.m.)

1 VIDEOGRAPHER: We're going back
2 on record, beginning of Media File
3 Number 12. The time is 5:03.

4 QUESTIONS BY MS. MAINIGI:

5 Q. So, Mr. Prevoznik, just
6 following up on our last line of questioning,
7 is it fair to say that DEA has no internal
8 policy defining the circumstances under which
9 a distributor is required to terminate the
10 distribution of controlled substances to a
11 pharmacy?

12 MR. FINKELSTEIN: Objection.
13 Mischaracterizes his prior testimony.

14 THE WITNESS: Could you please
15 repeat that?

16 QUESTIONS BY MS. MAINIGI:

17 Q. Sure.
18 Is it fair to say that DEA has
19 no internal policy defining the circumstances
20 under which a distributor is required to
21 terminate the distribution of controlled
22 substances to a pharmacy?

23 A. Yes.

24 Q. Now, do you recall being asked
25 last time a number of questions about the